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agency issues

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Association Endorses Pension Tax Resolution

The Association has endorsed a resolution (S. Res. 304) introduced by Senator Paul S. Trible, Jr. (R-VA) which expresses the sense of the Senate that the current three year recovery rule on the taxation of retirement annuities be maintained. Under current law, employees have up to three years to recover their contributions, which are tax-free since the employees paid tax at the time the contributions were made. The tax reform proposal (H.R. 3838) adopted by the House of Representatives would tax pensions immediately. At the time of retirement, the life expectancy of the retiree would be determined actuarially and the recovery of the amount of the employee's contribution would be spread throughout the anticipated life span.

In the letter of endorsement, IPMA President Charles A. Pounian stated that the "Association believes it is unsound personnel policy to change this provision so that retirees will no longer receive a tax-free annuity until the total amount of their contributions are recovered." He noted that many employees have planned their retirement based upon the assumption that their contributions, which have been fully taxed, will be distributed to them first as tax-free income. The Association believes that it is "inequitable to modify the rules which have served as a basis for financial planning."

President Pounian cautioned that this proposal could result in the retirement of the most experienced employees at all levels of government. He stated that if this were to happen this could "seriously affect the ability of government to continue to deliver services in the most efficient and effective manner possible."

This resolution has six cosponsors and has been referred to the Committee on Finance which is currently holding hearings on tax reform. The Association has joined a coalition of employer organizations, labor unions and members of Congress who oppose this provision.

FLSA Regulations Drafted

The United State Department of Labor has sent the Association an advance draft copy of its regulations concerning the application of the Fair Labor Standards Act (FLSA) to state and local government agencies. These regulations were prepared as a result of the enactment of the "Fair Labor Standards Act Amendments 1985" (P.L. 99-150) which provided relief to state and local governments from the ruling by the United States Supreme Court in the case of

Garcia v. San Antonio Metropolitan Transit Authority. These regulations still must be published as proposed rules in the Federal Register with a comment period of at least thirty days.

In the area of compensatory time, the draft regulations provide that public agencies can give their employees compensatory time off in lieu of monetary overtime compensation. The compensatory time must be earned at the rate of at least one and one-half hours for each hour of overtime. Employees who work in public safety, emergency response or a seasonal activity can accrue up to 480 hours of compensatory time for hours worked after April 15, 1986. All other public employees covered by the FLSA can accrue up to 240 hours of compensatory time. Employees who, after April 15, 1986, have accrued the maximum amount of compensatory time must be paid cash for additional overtime hours. The draft regulations provide that compensatory time can be provided only pursuant to the terms of a collective bargaining agreement or memorandum of understanding between the agency and the representatives of the employees or an agreement between the employer and employee. The agreement need not be in writing, but a record of its existence must be kept. The regulations state that any employee who has accrued compensatory time, "shall be permitted to use such time off within a reasonable period after making the request, if such use does not unduly disrupt the operations of the agency."

In the area of compensatory time recordkeeping, the regulations would require that records be kept of the number of hours of compensatory time earned each workweek by each employee; the number of hours of compensatory time used each workweek; the number of hours of compensatory time paid in cash, the amount paid and the date of the payment; and any collective bargaining agreement or written understanding concerning compensatory time.

Regarding volunteers, the regulations provide that the FLSA allows individuals to perform volunteer services for state and local governments without being considered as employees. The regulations define a volunteer as "an individual who performs hours of service for a public agency... for civic, charitable, or humanitarian reasons, without promise or expectation of compensation for services rendered..." The regulations note that individuals would not be considered volunteers where they are employed by the same public agency to perform the same type of services as they intend to undertake on a voluntary basis. Examples included in the regulations of volunteer services which are not the same type of services include a city police officer who volunteers as a part-time referee in a basketball league or an employee of the city parks department who serves as a volunteer firefighter.

The regulations also provide that state or local government employees may work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment and the hours worked would not be combined for overtime purposes. The regulations caution that "in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employees' regular work."

For additional information or for a copy of the regulations, please contact Neil Reichenberg, director of Governmental Affairs, IPMA, 1617 Duke Street, Alexandria, VA 22314 or call (703) 549-7100.

Wage And Hour Opinion Letter Response Received

The Association has received a response from the Department of Labor on its request for an interpretation of the Fair Labor Standards Act (FLSA) concerning the issue of joint employment. The "Fair Labor Standards Act Amendments of 1985" (P.L. 99-150) stipulates that for public safety officers, joint employment situations will be considered as two separate jobs and thus would not result in a combining of the hours worked each week for a determination of overtime liability. For other non-exempt employees of state and local governments, it is not clear how this issue should be handled.

The Association's letter noted that this issue can arise in several circumstances, including employees who work full-time for a state agency and also teach part-time at a state college; employees who work either full or part-time for two executive branch agencies; or employees who work separate jobs in both the executive branch or judicial branch of government. The Association recommended that the Department of Labor consider each of these circumstances as two separate employment situations.

The Department of Labor noted that, under certain conditions, two or more agencies of a state or local government may be considered separate employers. According to the Labor Department, the factors which would support such a determination include: (1) the agencies are treated as separate employers for payroll purposes; (2) the agencies deal with each other at "arms length" concerning the employment of any individual; (3) the agencies have separate budgets or funding authorities; (4) the agencies participate in separate employee retirement systems; (5) the agencies are independent entities with full authority to perform all of the acts necessary to their functions; and (6) the agencies can sue and be sued in their own names. The Department of Labor stated that "since we do not consider any one of these factors to be controlling, we will look to the overall operation of the state (or local) agency in making a determination as to whether the agency is a separate employer for purposes of FLSA."

The Labor Department cautioned that "because of the close connections among many state agencies, any arrangements where the employees work for two or more state agencies during the same workweek must be examined with great care and on a case-by-case basis to determine if joint employment exists." In determining whether a joint employment situation exists the Labor Department will consider the following questions: (1) is the employment by the second agency completely voluntary on the part of the employee? (2) when employed by one agency, are the employees promised additional work from a second agency? (3) are employees of one agency given a special preference for additional work at another agency? (4) does the work for one agency represent only part-time or irregular work? (5) what are the percentages of time in all workweeks in which the employee works for one state agency as compared to the employee's work for another agency? and (6) have employees ever been fired or disciplined for failing to perform a job for another agency?

For a copy of the opinion letter, please contact Neil Reichenberg, director of Governmental Affairs, IPMA, 1617 Duke Street, Alexandria, VA 22314 or call (703) 549-7100.

JTPA Update

Senator Dan Quayle (R-IN), chairman of the Subcommittee on Employment and Productivity of the Committee on Labor and Human Resources has introduced a bill (S. 1990) entitled the "Education and Training Partnership Act." This bill would establish an independent agency in the executive branch called the Education and Training Partnership which would administer the Job Training Partnership Act (JTPA), the Wagner-Peyser Act and the Carl D. Perkins Vocational Education Act. According to Senator Quayle, the purpose of this bill would be to "involve the private sector in the federal administration of certain education and training programs."

The Education and Training Partnership established by this bill would be headed by a nine-member board of directors. Five of the nine members would be private sector representatives appointed by the President, with three of the five representing employers and the other two representing labor. The remaining four representatives would be the Secretaries of Labor, Education, Commerce and Health and Human Services. The Education and Training Partnership would assume the responsibilities assigned to the Secretary of Labor under the JTPA and the Wagner-Peyser Act and the responsibilities assigned to the Secretary of Education under the Carl D. Perkins Vocational Education Act.

Senator Edward Kennedy (D-MA), ranking minority member on the Committee on Labor and Human Resources cosponsored this bill. The Subcommittee on Employment and Productivity intends to hold hearings during this session of Congress.

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